

1 Honorable Robert S. Lasnik
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZAMBEZIA FILM LTD,
Plaintiff
v.
JOHN DOES 1- 57
Defendants.

Case No. 2:13-cv-00318
FIRST AMENDED ANSWER
AND COUNTERCLAIM
Jury Demanded

Defendant **Susan Vandee** ("Ms. Vandee") hereby responds to Plaintiff Zambezia Film Ltd., ("Zambezia")'s Complaint. Defendant Ms. Vandee is identified in Plaintiff's Complaint by I.P. Address **174.61.254.183**. In answer to the complaint, Ms. Vandee states as follows:

Jurisdiction And Venue

1. Admitted that this is an action which purports to recite a claim for copyright infringement and contributory copyright infringement. Denied that the action has merit.

2. Admitted.

3. Defendant admits only that this Court has personal jurisdiction. All other allegations are denied.

JOINDER

4. Defendant denies any involvement in any act related to, or even any knowledge of, the “Motion Picture.” Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of this paragraph and therefore denies those allegations.

5. Defendant denies any involvement in any “swarm.” Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 5 and therefore denies those allegations.

6. Defendant denies any involvement in any “swarm.” Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6 and therefore denies those allegations.

7. Defendant denies any involvement in any “swarm.” Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7 and therefore denies those allegations.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 8 and therefore denies those allegations.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 9 and therefore denies those allegations.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and therefore denies those allegations.

1 11. Denied as to Ms. Vandee. Defendant is without knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegations
3 of Paragraph 11 and therefore denies those allegations.

4 12. Defendant is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations of Paragraph 12 and therefore denies
6 those allegations.

7 13. Defendant denies any participation in any infringement. Defendant
8 is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations of Paragraph 13 and therefore denies those allegations.

10 14. Defendant denies any participation in any infringement. Defendant
11 is without knowledge or information sufficient to form a belief as to the truth of
12 the allegations of Paragraph 14 and therefore denies those allegations.

13 15. Defendant is without knowledge or information sufficient to form a
14 belief as to the truth of the allegations of Paragraph 15 and therefore denies
15 those allegations.

16 16. Defendant is without knowledge or information sufficient to form a
17 belief as to the truth of the allegations of Paragraph 16 and therefore denies
18 those allegations.

19 17. Defendant is without knowledge or information sufficient to form a
20 belief as to the truth of the allegations of Paragraph 17 and therefore denies
21 those allegations.

22 18. Defendant is without knowledge or information sufficient to form a
23 belief as to the truth of the allegations of Paragraph 18 and therefore denies
24 those allegations.

PARTIES

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies those allegations.

20. Denied that Ms. Vandee participated in any swarm. Denied that the National Security Agency developed the “hashing” algorithm; Hans Luhn is generally credited with creating the concept of a hashing algorithm while he was a computer scientist at IBM. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20 and therefore denies those allegations.

21. Denied.

22. Denied that Ms. Vandee participated in any infringement. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 and therefore denies those allegations.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 and therefore denies those allegations.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 and therefore denies those allegations.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 and therefore denies those allegations.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 and therefore denies those allegations.

THE COPYRIGHT

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 and therefore denies those allegations.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 and therefore denies those allegations.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29 and therefore denies those allegations. Specifically, on information and belief, Plaintiff may not be the true copyright owner or owns less than sufficient rights in the work to maintain this action.

30. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30 and therefore denies those allegations. Specifically, on information and belief, Plaintiff may not be the true copyright owner or owns less than sufficient rights in the work to maintain this action.

31. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 31 and therefore denies those allegations.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 and therefore denies those allegations

1 **COPYRIGHT INFRINGEMENT AND BITTORRENT**

2 33. Defendant is without knowledge or information sufficient to form a
3 belief as to the truth of the allegations of Paragraph 33 and therefore denies
4 those allegations.

5 34. Defendant is without knowledge or information sufficient to form a
6 belief as to the truth of the allegations of Paragraph 34 and therefore denies
7 those allegations.

8 35. Denied that Ms. Vandee visited any such “torrent site.” Defendant
9 is without knowledge or information sufficient to form a belief as to the truth of
10 the allegations of Paragraph 35 and therefore denies those allegations.

11 36. Defendant is without knowledge or information sufficient to form a
12 belief as to the truth of the allegations of Paragraph 36 and therefore denies
13 those allegations.

15 37. Denied that the National Security Agency developed the concept of
16 a hashing algorithm. Denied that a hash value acts as a “roadmap” to anything,
17 least of all IP addresses. Defendant is without knowledge or information
18 sufficient to form a belief as to the truth of the allegations of Paragraph 37 and
19 therefore denies those allegations.

20 38. Defendant is without knowledge or information sufficient to form a
21 belief as to the truth of the allegations of Paragraph 38 and therefore denies
22 those allegations.

23 39. Denied.

25 40. Defendant is without knowledge or information sufficient to form a
26 belief as to the truth of the allegations of Paragraph 40 and therefore denies
27 those allegations.

1 41. Defendant is without knowledge or information sufficient to form a
2 belief as to the truth of the allegations of Paragraph 41 and therefore denies
3 those allegations. The phrase “in this is Hash” is not understood, and therefore
4 denied.

5 42. Denied that Ms. Vandee participated in any swarm. Defendant is
6 without knowledge or information sufficient to form a belief as to the truth of
7 the remaining allegations of Paragraph 42 and therefore denies those allegations.

8 43. Defendant is without knowledge or information sufficient to form a
9 belief as to the truth of the allegations of Paragraph 43 and therefore denies
10 those allegations.

12 44. Denied that Ms. Vandee participated in any infringement.
13 Defendant is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations of Paragraph 44 and therefore denies those
15 allegations.

16 45. Denied that Plaintiff identified Defendant publishing the Motion
17 Picture via BitTorrent or any other method. Defendant is without knowledge or
18 information sufficient to form a belief as to the truth of the remaining allegations
19 of Paragraph 45 and therefore denies those allegations.

20 46. Denied that Plaintiff created the Motion Picture. On information
21 and belief, Plaintiff has never created anything except lawsuits.

23 47. Defendant is without knowledge or information sufficient to form a
24 belief as to the truth of the allegations of Paragraph 47 and therefore denies
25 those allegations.

26 48. Denied that Ms. Vandee distributed the Motion Picture in any way,
27 least of all by BitTorrent. Defendant is without knowledge or information

1 sufficient to form a belief as to the truth of the remaining allegations of
2 Paragraph 48 and therefore denies those allegations.

3 49. Denied.

4 **Defendants Are Members Of BitTorrent Swarm**

5 50. Denied.

6 51. Denied.

7 52. Denied.

8 53. Denied.

9 54. Denied.

10 **COUNT I**

11 **DIRECT COPYRIGHT INFRINGEMENT**

12 13 55. Defendant repeats each denial of paragraphs 1-54 above as if set
forth fully here.

14 15 56. Denied that Ms. Vandee participated in any infringement.
Defendant is without knowledge or information sufficient to form a belief as to
the truth of the allegations of Paragraph 56 and therefore denies those
allegations.

16 17 57. Defendant is without knowledge or information sufficient to form a
belief as to the truth of the allegations of Paragraph 57 and therefore denies
those allegations.

18 19 58. Denied that Ms. Vandee participated in any infringement.
Defendant is without knowledge or information sufficient to form a belief as to
the truth of the remaining allegations of Paragraph 58 and therefore denies those
allegations.

59. Denied that Ms. Vandee participated in any infringement. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 59 and therefore denies those allegations.

60. Denied.

61. Denied.

COUNT II

CONTRIBUTORY COPYRIGHT INFRINGEMENT

62. Defendant repeats each denial of paragraphs 1-61 above as if set forth fully here.

63. Denied that Defendant contributed to any infringing conduct. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 63 and therefore denies those allegations.

64. Denied that Defendant contributed to any infringing conduct. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 64 and therefore denies those allegations.

65. Denied.

66 Denied

67 Denied

68 Denied

60 Denied

Prayer For Relief

Defendant denies that Plaintiff is entitled to any of the relief prayed for in the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses without undertaking or otherwise shifting any applicable burden of proof.

Lack Of Standing

Plaintiff is not the real party in interest in this matter and/or does not have sufficient rights to maintain this action. Plaintiff's rights, if any, in the purported copyright fail to confer proper standing on Plaintiff to maintain this action.

No Infringement

Defendant has not engaged in or contributed to any infringement of the purported copyright.

Abuse Of Process

Plaintiff's claims are an abuse of process and are being pursued for an improper purpose.

Misuse Of Copyright

Plaintiff's claims are barred by the doctrine of misuse of copyright based on Plaintiff's improper conduct and actions in bringing and maintaining this and other actions exactly like it around the country.

Estoppel And Unclean Hands

Plaintiff's claims are barred by the doctrine of estoppel. Even though Defendant had no involvement in any direct or contributory infringement, Plaintiff likely knew the facts of any alleged file-sharing by other defendants or other non-defendants. Plaintiff acted in such manner that other defendants and/or third parties were entitled to, and did, believe that the continued

1 availability of the copyrighted work on BitTorrent was intended by Plaintiff, and
2 any actions to download were induced by, and done in reliance on, Plaintiff's
3 conduct.

4 **Implied License**

5 Plaintiff's claims are barred by implied license. By making its own
6 copyrighted work available using the BitTorrent protocol to users of that
7 protocol, Plaintiff has conveyed an implied license to the copyrighted work to
8 any users of the BitTorrent protocol.

9 **Inadequacy Of Copyright Assignment**

10 Plaintiff's purported rights in the copyrighted work, if any, fail to include
11 the right to sue for prior infringements.

12 **COUNTERCLAIMS**

13 For its Counterclaims against Plaintiff Zambezia, Defendant Ms. Vandee
14 asserts as follows:

15 **THE PARTIES**

16 1. Defendant/Counterclaimant is an individual residing in this District.
17
18 2. Plaintiff/Counterclaim Defendant Zambezia is purportedly a **South**
19 **African Company with a principal place of business in Cape Town, South**
20 **Africa.**

21 **JURISDICTION AND VENUE**

22 3. This Court has subject matter jurisdiction over these counterclaims
23 pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202. The counterclaims
24 are so related to the claims asserted by Plaintiff in this action that they form part
25 of the same case or controversy under Article III of the United States
26 Constitution, and arise out of common facts, transactions, or occurrences as
27 provided under Fed. R. Civ. P. 13 and 20.

4. This Court has personal jurisdiction over Plaintiff. Plaintiff availed itself of this Court's jurisdiction by bringing this action in this District.

5. Venue in this District is proper over the counterclaims pursuant to 28 U.S.C. § 1391.

GENERAL BACKGROUND

6. Plaintiff has brought this and other identical actions in countless other cases in this District as well as many other districts across the country. For example, Zambezia is the named plaintiff in the following cases filed in this District on the same day: *Zambezia Film (Pty.) Ltd. v. Does 1-47*, 2:13-cv-00307; *Zambezia Film (Pty.) Ltd. v. Does 1-66*, 2:13-cv-00308; *Zambezia Film (Pty) Ltd v. Does 1-66*, 2:13-cv-00309 ; *Zambezia Film (Pty.) Ltd. v. Does 1-66*, 2:13-cv-00310; *Zambezia Film (Pty.) Ltd. v. Does 1-66*, 2:13-cv-00311; *Zambezia Film (Pty.) Ltd. v. Does 1-70*, 2:13-cv-00312; *Zambezia Film (Pty) Ltd v. Does 1-48*, 2:13-cv-00313; *Zambezia Film (Pty.) Ltd. v. Does 1-58*, 2:13-cv-00314; *Zambezia Film (Pty) Ltd v. Does 1-51*, 2:13-cv-00315; *Zambezia Film (Pty) Ltd v. Does 1-51*, 2:13-cv-00316; *Zambezia Film (Pty) Ltd v. Does 1-18*, 2:13-cv-00317; *Zambezia Film (Pty) Ltd v. Does 1-57*, 2:13-cv-00318; and *Zambezia Film (Pty) Ltd v. Does 1-47*, 2:13-cv-00319. **None of those other matters were identified as related cases to this matter.**

7. Plaintiff alleges that it is in the business of making and producing films, yet there is no evidence that Plaintiff has, in fact, conducted any business other than filing copyright infringement lawsuits.

8. Plaintiff is one of at least five different plaintiffs which have all filed almost identical copyright infringement cases in this District using nearly identical pleadings (including the exact same typographical errors among the several cases). See, e.g., *Kintop Pictures v. Does 1-26*, 2:12-cv-02159; *R & D*

1 *Film 1, LLC v. Does 1-46*, 2:13-cv-00050; *Riding Films, Inc. v. Does 1-35*, 2:13-
 2 cv-00255; *Zembezia Film (Pty.) Ltd. v. Does 1-47*, 2:13-cv-00307; and *Voltage*
 3 *Pictures, LLC v. Does 1-18*, 2:13-cv-00455. All of the different plaintiffs use the
 4 same counsel as the instant action.

5 9. All five of those different plaintiffs have also brought similar
 6 actions in other cases around the country. See, e.g., *Kintop Pictures v. Does 1-78*, 12-cv-1210 (MDTN); *R&D Film 1 LLC v. Does 1-20*, 12-cv-5817 (NDIL);
 7 *Riding Films Inc. v. Does 1-61*, 13-cv-0018 (SDGA); *Zambezia Film Ltd v.*
 8 *Does 1-17*, 13-cv-0043 (EDTN); and *Voltage Pictures LLC v. Does 1-24*, 13-cv-
 9 0463 (NDOH), as well as countless others.

10 10. In each other district, the actions brought by those other plaintiffs
 11 are also brought by the same counsel. See, for example:

12 (a) In the Middle and Eastern Districts of Tennessee, Clint W. Alexander
 13 is counsel of record on: *Voltage Pictures LLC v. Does 1-92*, 13-cv-0132; *Kintop*
 14 *Pictures v. Does 1-78*, 12-cv-1210; *Riding Films Inc. v. Does 1-92*, 12-cv-1247;
 15 *R&D Film 1 LLC v. Does 1-96*, 13-cv-0617; and

16 (b) In the Southern District of Georgia, Nathan C. Belzer is counsel of
 17 record on: *Zambezia Film Ltd v. Does 1-33*, 13-cv-0016; *Riding Films Inc. v.*
 18 *Does 1-24*, 13-cv-0020; *R&D Film 1 LLC v. Does-1-37*, 12-cv-0283.

19 11. In none of the countless cases across the country brought on behalf
 20 of the instant Plaintiff, or any of the other plaintiffs, is any relationship between
 21 them ever disclosed to the various courts, despite the nearly-uniform
 22 requirement that every entity with a financial stake in the outcome of the
 23 litigation must be disclosed. See, L.C.R. 7.1.

12. It is inconceivable that multiple completely unrelated entities all happened to stumble upon the exact same set of plaintiff's lawyers in each of countless different districts around the country.

13. On information and belief, Defendant Ms. Vandee alleges that discovery will reveal a currently undisclosed entity is, in fact, the real party in interest in this and other similar matters.

FIRST COUNTERCLAIM

(Declaratory Judgment Of Non-Infringement)

14. Defendant incorporates by reference all foregoing allegations made in the affirmative defenses and counterclaims as if fully set forth herein.

15. There is an actual and justiciable controversy between the parties regarding the alleged direct and contributory copyright infringement.

16. Defendant has not infringed Plaintiff's alleged copyright. Plaintiff cannot knowingly claim otherwise.

17. Defendant is entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201 that Defendant has not infringed, either directly or contributorily, the purportedly-copyrighted work.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counterclaimant Ms. Vandee respectfully requests that this Court issue judgment as follows:

A. That Zambezia take nothing by the Complaint and that the same be dismissed with prejudice;

B. That Plaintiff has misused its copyright and that it should be rendered unenforceable;

1 C. That Defendant/Counterclaimant Ms. Vandee is not liable for
2 directly or indirectly infringing Plaintiff's copyright;

3 D. For an award of costs and reasonable attorneys fees incurred in
4 defending this action;

5 E. For an award of pre- and post-judgment interest; and

6 F. For such other and further relief as the Court deems appropriate.

7

8 **JURY DEMAND**

9 Defendant demands a trial by jury on all issues presented in the
10 Complaint and this Answer and Counterclaim.

11 Dated: May 9, 2013

12 Respectfully submitted,

13 /s/ John Whitaker

14 John Whitaker, WSBA No: 28868
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17 Seattle, Washington 98101
18 Phone (206) 436-8500
Fax (206) 694-2203
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19 Attorney for Defendant

CERTIFICATE OF SERVICE

I, Anne K. Smart, hereby certify that on the date indicated below, I caused a true and correct copy of the foregoing to be served on all parties who have appeared in this case:

DATED: May 9, 2013

s/Anne K. Smart

Anne K. Smart

Whitaker Law Group